

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

HARRY ASATO PAINTING, INC.

and

Cases 20-CA-124382
20-CA-125157

INTERNATIONAL UNION OF PAINTERS
AND ALLIED TRADES, PAINTERS
LOCAL UNION 1791

ORDER¹

The Respondent's Motion to Dismiss the complaint in part is denied. The Respondent has failed to establish that there are no genuine issues of material fact² and that it is entitled to judgment as a matter of law.³

Dated, Washington, D.C., October 20, 2014

MARK GASTON PEARCE, CHAIRMAN

HARRY I. JOHNSON, III, MEMBER

NANCY SCHIFFER, MEMBER

¹ The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

² Member Johnson notes that the theory of the Respondent's Motion to Dismiss is essentially that the complaint is deficient because it alleges that Respondent "adopted some unknown collective bargaining agreements" by virtue of its conduct. R. Mot. at 3. He would agree with Respondent if the General Counsel had not specified a labor contract at all in the complaint, but the General Counsel did specify the contract, and also specific conduct referable to that contract for purposes of the "adoption by conduct" theory. Without expressing a view on the merits of the case, he finds that is enough to survive a motion to dismiss.

³ The General Counsel argues that the motion should be dismissed because it was incorrectly filed with the Division of Judges rather than with the Board as required by Sec. 102.24 of the Board's Rules and Regulations, and further argues that the motion should be dismissed because it was not served on the Region as required by Section 102.114 of the Board's Rules and Regulations. In light of the fact that no party has shown that it was prejudiced by the Respondent's procedural error in filing its motion with the Division of Judges we accept the motion as timely filed. Further, the Board has long held that it "generally will not reject an improperly served document absent a showing of prejudice to a party." *Paolicelli*, 335 NLRB 881, 882 (2001), quoting *Century Parking, Inc.*, 327 NLRB 21 fn. 7 (1998). In addition, "[w]hile the Board strongly encourages strict compliance with its procedural rules, including those concerning the manner of filing and serving answers to complaints, the Board recognizes that the law favors a determination on the merits." *Id.*, citing *M.J. McNally, Inc.*, 302 NLRB 120 (1991).